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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Note verbale dated 13 March 2002 from the Permanent Mission of Kuwait to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The Permanent Mission of the State of Kuwait to the United Nations Office and other International Organizations in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and has the honour to enclose herewith the note from the Government of the State of Kuwait in response to the Iraqi explanatory note annexed to the note verbale dated 31 May 2001 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the High Commissioner for Human Rights and published under document E/CN.4/2002/4 dated 10 August 2001.

The Permanent Mission of the State of Kuwait would highly appreciate if the High Commissioner for Human Rights could circulate the enclosed letter* as an official document of the 58th session of the Commission on Human Rights, under item 9 of the agenda entitled "Question of the violation of human rights and fundamental freedoms in any part of the world".

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* Reproduced as received, in the languages of submission only.

ANNEX

Note from the Government of the State of Kuwait in response to the Iraqi explanatory note annexed to the note verbale addressed to the High Commissioner for Human Rights by the Permanent Mission of Iraq (doc. E/CN.4/2002/4)

The Government of the State of Kuwait has examined the explanatory note presented by the Government of Iraq concerning the resolution 2001/14 adopted by the Commission on Human Rights, published under document E/CN.4/2002/4 dated 10/8/2001, and has the honour, in this respect, to assert the following:

1. The note in its whole, is an evident approach by Iraq which it always adopts in facing world criticism. An approach based on fallacies, distortion and selectivity as it tries to undermine and ignore the rights of the Iraqi individual by adopting unfounded justifications. Even worse, these justifications are the means it employs to violate those rights. However, this is an unacceptable behaviour which will impress or deceive no one.

The violations of human rights in Iraq are crystal clear. The Special Rapporteur on the situation of human rights in Iraq has unequivocally affirmed in his reports since 1991 till today, that there are violations of the rights of the Iraqi individual namely torture or cruel, inhuman or degrading treatment or punishment, extrajudicial killings, arbitrary executions, persecution on account of political opinions, ethnicity and religious affiliation, forced population transfers, arbitrary arrest and detention, and lack of fair trial.

He also emphasized that **"nothing can justify serious violations of human rights and fundamental freedoms"** (doc. A/55/294). The United Nations human rights treaty bodies went along with this position by requesting Iraq to fulfil its treaty obligations (i.e. protection and promotion of the rights of the Iraqi individual), following their examination of the reports presented by Iraq concerning its implementation of the provisions of the relevant treaties on human rights.

2. The explanatory note alleges in its first paragraph that the Security Council resolutions mentioned in the resolution of the Commission on Human Rights regarding the situation of human rights in Iraq are not related in any way to the accusations contained in the mentioned resolution. These allegations are unfounded.

Resolutions 686 (1991), 687 (1991) and 1284 (1999) deal with the issue of Kuwaiti and third country nationals detained by Iraq since 1990. This issue is considered part of the mandate of the Special Rapporteur on the situation of human rights in Iraq and it has been affirmed so in the following documents:

(a) The Statement of Mr. Max Van Der Stoel, the former Special Rapporteur on the situation of human rights in Iraq, delivered on 31/3/1999 before the 55th Session of the Commission on Human Rights, in which he reported that **"The Commission on Human Rights**

decided at its session early 1991 to appoint two independent experts to investigate and asses, respectively, the actions of the Iraqi authorities during their occupation of Kuwait and the actions of the Iraqi authorities within Iraq. Professor Walter Kälin of Switzerland reported on the situation of human rights in Kuwait under Iraqi occupation. Following discontinuation of his mandate, I was assigned responsibility to report on the continuing violation of the missing Kuwaiti and third country nationals. This issue thus became part of my mandate in addition to reporting on violations committed by the Government of Iraq".

(b) The former Secretary-General of the United Nations Dr. Boutros Boutros-Ghali states in paragraph 195 of his introduction to a book issued by the United Nations entitled "The United Nations and the Iraq-Kuwait Conflict, 1990-1996" that **"The Commission on Human Rights has made the fate of persons missing as a result of the Gulf conflict part of the mandate of the Special Rapporteur on the situation of human rights in Iraq"** (blue book No. ISBN 92-1 000072-2).

(c) The report of the former Special Rapporteur on the situation of human rights in Iraq presented to the 50th Session of the Commission on Human Rights in 1995, under document 216 of the above-mentioned book, where he states in its paragraph 19 that **"the fate of Kuwaitis and other persons who disappeared during Iraq's occupation of Kuwait forms part of the mandate of the Special Rapporteur as a result of paragraph 4 of Commission resolution 1992/71, ...".**

However, other Security Council resolutions referred to in the resolution of the Commission on Human Rights on the situation of human rights in Iraq in addition to resolution 1284 (1999), deal with the humanitarian situation in Iraq which is the core of the mandate of the Special Rapporteur on the situation of human rights in Iraq.

3. The Iraqi regime is accustomed to follow the policy of procrastination in order to avoid facing its responsibilities and fulfilling its obligations. In the past, it used human beings as shields in order to promote its political agenda and today it is employing technical shields to evade its responsibilities and obligations. It denies the existence of Kuwaiti prisoners of war in Iraq and claims they are missing since the 1991 events (paragraph 7 of the Iraqi explanatory note). Nevertheless, it forgets or claims to have forgotten that an aggressor state is legally bound to investigate the whereabouts of missing persons and is fully responsible for determining their fate.

In this regard, it is necessary to affirm that Kuwaitis and third country nationals are prisoners of war and civilians detained by Iraq. They were arrested by the Iraqi occupation forces then were deported to Iraq and detained there, according to what Iraqi documents unveiled and to the testimonies of prisoners of war who returned from Iraq where they had been detained.

In its Letter dated 3 March 1991 published under two documents (S/22320 & S/22321) addressed to the President of the Security Council and to the Secretary-General of the United Nations, Iraq agreed to fulfil its obligations under resolution 686 (1991), which represents an implied recognition of its responsibilities towards Kuwaitis and third country nationals detained by it.

Iraq also acknowledged the applicability of both Third and Fourth Geneva Conventions on the Treatment of Prisoners of War and Protection of Civilian Persons, on Kuwaiti and third country nationals detained by it upon signing the Riyadh Agreement on 7/3/1991.

The Secretary-General of the United Nations also clearly affirmed that **"It would be helpful if Iraq were to abandon its stance of declaring no knowledge of the whereabouts and fate of the Kuwaiti and third-country nationals who were arrested and deported more then 11 years ago. It must adopt a constructive position of cooperation on the repatriation or return of those persons or their mortal remains"** (doc. S/2001/1196).

The international community remains united on this humanitarian issue and the Security Council members pointed out that it should be maintained on the agenda of the Council without it being politicized (doc. S/2001/1196).

On the basis of what was pointed out hereabove, Iraq seeks political gains out of a humanitarian issue. Iraq has the responsibility to cooperate with the relevant United Nations mechanisms in order to determine the whereabouts and fate of Kuwaitis and third country nationals. If Iraq is sincere then it has to show its good will in this matter.

Prisoners of war and civilians detained by Iraq are not only Kuwaitis but there are other nationals belonging to third countries (Saudi Arabia, Egypt, Iran, Syria, Lebanon, Bahrain, Sultanate of Oman and India). Enclosed herewith an Annex with the total number of prisoners of war and their nationalities as well as a classification by gender and age.

4. The Security Council constantly reaffirmed the responsibility of Iraq in accordance with the International Law, for any losses, damages or injuries deriving from its illegitimate invasion and occupation of Kuwait. However, Iraq is always trying to evade its responsibilities by paying the compensations to which it is legally bound according to the International Law, as mentioned in the penultimate paragraph of its note, claiming that the drafters of the paragraph (on paying compensations) either were unaware of the true state of affairs or pursued political objectives, and justifying that these compensations were unfairly approved to the National Committee for the Missing and Prisoners of War's Affairs by the United Nations Compensation Commission.

But facts prove that the responsibility of Iraq is not only limited to paying compensations to the National Committee for the Missing and Prisoners of War's Affairs, but that it is also responsible for compensating those individuals it still detains and who are entitled, in accordance with the International Law, to claim compensations for the losses they suffered, either after their release or in case they deceased. On those grounds, the Panel of Commissioners of the UNCC recommended, in its report (doc. S/AC.26/1999/24) **"that the Commission's review of this loss element be performed when the Missing are released or the Government of Kuwait determines that they are deceased".**

The Panel's report and recommendations contained in the above-mentioned document confirm the righteousness of the request addressed by the Commission of Human Rights to Iraq to pay the compensations to the families of the prisoners of war detained by Iraq, which

preserves the right of the prisoners of war to compensation for the damages inflicted upon them and their families as a result of the illegitimate act perpetrated by the Iraqi regime by its invasion and occupation of Kuwait. Iraq must bear full responsibility for such acts.

In conclusion, all previous affirmations and contents of documents referred to confirm undoubtedly that Iraq still distorts facts and uses selective methods with the clear aim of deceiving the world by letting everybody believe that it had fulfilled its obligations. However, facts confirm the exact opposite and prove Iraq's bad will and its continuous denial of any cooperation in order to shoulder its responsibility as a result of its illegitimate invasion and occupation of the State of Kuwait.

Prisoners of War and Civilians detained by Iraq as a result of the brutal Iraqi invasion of the State of Kuwait

- Kuwaitis : 572
- Other nationalities : 33

(14 Saudi, 5 Egyptians, 4 Iranians, 4 Syrians, 3 Lebanese, 1 Bahrainee, 1 Omanee, 1 Indian)

- *Gender:*
  - * Males : 598
  - * Females : 7

- *Age: (at time of arrest)*
  - * Under 18 : 42 (7 %)
  - * between 18 & 30 : 411 (68 %)
  - * between 31 & 50 : 136 (22 %)
  - * between 51 & 80 : 16 (3 %)